IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.8678 of 2006
Date of Decision: 06.09.2006

Sajjan Singh ..Petitioner

versus

Haryana State Agricultural Marketing Board ..Respondents

CORAM : HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S.BEDI

Present : Mr. R.K.Malik, Advocate for the petitioner
Mr. Durgesh Aggarwal, Advocate for the respondents.

M.M.Kumar.J.(Oral)

The petitioner has prayed for issuance of direction to the respondent-Haryana State Agricultural Marketing Board (for brevity ' the Board') to release his retiral benefits viz. pension, gratuity, commutation of pension, leave encashment along with interest. He was appointed as Mandi Supervisor in the Board. He retired from the service on attaining superannuation on 30.9.2004. It is claimed that the retiral benefits of the petitioner have not been released and a direction has been sought for the release of those benefits.

In the written statement, the Board has claimed that the retiral benefits had already been granted by fixing the pension of the petitioner @ Rs. 5435/- per month. It has further been pointed out that after deducting commutation of pension, the petitioner has been getting Rs. 3261/- per month plus other allowances. The petitioner has also been paid commutation of pension amounting to Rs. 2,72,880/-. An amount of Rs. 1,86,178/- from the

gratuity of the petitioner has been withheld and an amount of Rs. 19,706/- has been adjusted towards the recovery of house building loan. Likewise, an amount of Rs. 99,992/- from leave encashment has been withheld. Accordingly, a total amount of Rs. 2,86,170/- from the retiral benefits of the petitioner has been withheld, which is subject to the decision of this Court in RSA No. 4249 of 2003 which is pending adjudication.

Mr. R.K.Malik, learned counsel for the petitioner has argued that no recovery either from the gratuity or from leave encashment is permissible because the petitioner had filed a civil suit in the year 1995 claiming that his pay was required to be fixed at par with his juniors. According to learned counsel, the suit was decreed on 30.7.1999 and the first appeal was dismissed by the learned Additional District Judge, Narnaul. The Board has filed RSA No. 4249 of 2003 which stands admitted and the prayer of the Board for staying the judgment and decree has been expressly declined by this Court. Therefore, it has been urged that no recovery from the aforementioned amount of gratuity and leave encashment could be made. Mr. Malik, however has conceded the receipt of payment of other amount except withholding of Rs. 2,86,170/-.

Mr. Durgesh Aggarwal, learned counsel for the respondent has not been able to point out anything to the contrary. In other words, the passing of judgment and decree by the Civil Court and refusal of this Court to stay the judgment and decree are the admitted facts.

Having heard the learned counsel for the parties, we are of the considered view that the petitioner has already been granted all pensionary benefits except the withheld amount of gratuity and leave encashment. It remains undisputed that Civil Court has passed a decree in favour of the petitioner by holding that his pay is required to be fixed at par with his juniors.

In the decree dated 30.7.1999, the following view has been taken by the Court below:-

> " In view of my findings on the foregoing issues, the case of the plaintiff succeeds and the same is hereby decreed with the costs. The plaintiff is held entitled to fixation of his pay so as to make it equivalent to it to the pay of Faquir Chand Gupta. He is also held entitled to the arrears of pay w.e.f. 1.1.86 along with interest at the rate of 12% per annum. Decree-sheet be prepared. File be consigned."

The aforementioned judgment and decree has not been stayed by this Court. On the contrary, the Court has refused to stay it expressly. Therefore, we see no justification for the respondent to withhold the part of gratuity and leave encashment. Accordingly, we allow the writ petition and direct the respondent to pay the petitioner an amount of Rs. 2,86,170/- within a period of one month from today. We further hold that the petitioner shall be entitled to interest @ 6% per annum if the aforementioned amount does not include the element of interest. The petitioner shall also be entitled to the grant of revised pension and other pensionary benefits after refixation of his pay in accordance with the direction given by Civil Court decree by bringing his pay at par with the junior of the petitioner i.e. Shri Faquir Chand Gupta.

The writ petition is accordingly disposed of.

(M.M.KUMAR)
JUDGE

September 6, 2006
''ravinder'

(M.M.S.BEDI)
JUDGE